

Maryland Enacts Mandatory State WARN Act Requirements and Imposes Additional Employer Obligations and Penalties

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In a move that could impact many Maryland employers, the Maryland General Assembly has made a major change to the state's version of the federal Worker Adjustment and Retraining Notification (WARN) Act or its "mini-WARN" law. In the past, Maryland law provided that employers should voluntarily give advance notice of significant layoffs, but in a dramatic turn, a new provision included in the Economic Stabilization Act ([S.B. 780](#)) will make the state law requirements mandatory and much tougher on employers. The new requirements are scheduled to take effect on October 1, 2020.

Coverage

The requirements apply to employers with *50 or more employees* operating industrial, commercial, or business enterprises in the state. The existing and amended law is silent as to whether employees located outside Maryland may be counted toward the 50. Similar to the federal WARN Act but with some differences, Maryland's mini-WARN law excludes for the purposes of determining "employer" coverage and "reduction in operations" counting those employees who (1) average fewer than 20 hours per week or (2) have worked for the employer for less than 6 of the preceding 12 months. (The federal WARN Act has a specific formula for assessing the average hours worked (the first prong) and indicates "6 of the relevant 12 months" (the second prong) should be assessed as of 60 days before the reduction-in-force date.)

Reduction in Operations

Covered employers must provide 60 days' advance written notice before initiating a "reduction in operations." Somewhat similar to a "mass layoff" under the federal WARN Act, but with some significant differences, Maryland's mini-WARN law defines a "reduction in operations" as:

- "the relocation of a part of an employer's operation from one workplace to another existing or proposed site"; or
- the shutdown of either:
 - a workplace; or
 - a portion of the operations of a workplace that reduces the number of employees by

the greater of (1) at least 25 percent or (2) at least 15 employees, over any 3-month period.

Maryland's new mandatory law thus has a lower threshold to trigger notice requirements than the federal WARN Act (i.e., under Maryland mini-WARN law, a reduction of at least 25 percent or 15 employees, whichever is greater, versus 33 percent and 50 employees under federal law). Maryland's mini-WARN law also captures more employers within its scope: the federal WARN Act covers employers with 100 or more employees; Maryland's mini-WARN law covers employers with only 50 employees. Additionally, there does not appear to be either a minimum geographic distance requirement or a minimum number of reduced employees, to trigger the "relocation" prong of Maryland's mini-WARN law.

Notice Requirements

Effective October 1, 2020, Maryland will require a covered employer to provide written notice to affected parties 60 days before initiating a reduction in operations. Notice must be given to:

- all employees at the workplace subject to the reduction;
- any exclusive representative or bargaining agency (e.g., a union) of the affected employees;
- state agencies (such as the Maryland Department of Labor's Division of Workforce Development and Adult Learning's Dislocated Worker Unit); and
- all elected local officials in the area of the affected workplace.

These requirements are similar to the federal WARN Act's requirements, although the "all elected local officials" component is broader than its equivalent under the federal WARN Act, which requires only that notice be given to the single chief elected official.

The notice must include:

- the name and address of the workplace where the reduction will occur;
- a supervisor's contact information (name, telephone number, and email address) for those seeking further information;
- a statement explaining whether the reduction is permanent or temporary and whether the workplace is expected to shut down; and
- the date when the reduction in operations is expected to begin.

These notice obligations mostly echo the federal WARN Act's notice requirements, although the Maryland mini-WARN law's email requirement and the workplace address requirement (for the employee notice) are different.

Continuation of Benefits

The law directs the Maryland Secretary of Labor to develop regulations for employers to continue providing benefits (e.g., health, severance, and pension) to employees being discharged due to covered reductions in operations. The law does not indicate whether such benefits must be provided during the 60-day notice period or following the termination of employment.

Civil Penalties

Of special concern to employers, the revised Maryland mini-WARN law includes a civil penalty of up to \$10,000 per day, to be assessed by the Maryland Secretary of Labor, for failure to provide the required notices to all required parties. The comparable federal WARN Act penalty is \$500 per day and is triggered only by a failure to provide notice to the chief elected official, not by a failure to provide notice to either affected employees or the union.

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